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MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

Written statement submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 March 1997]

1. The General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("Migrant Workers' Convention") by its resolution 45/158 on 18 December 1990. The Migrant Workers' Convention in its Preamble reflects the recognition that the rights of migrant workers and their families have not been sufficiently recognized everywhere and therefore require appropriate international protection.

2. The article 87 (1) of the Migrant Workers' Convention provides that the Convention shall enter into force after 20 States have ratified or acceded to it. In an attempt to reach this number, in its resolutions 1992/81 of 6 March 1992, 1993/89 of 10 March 1993, 1994/17 of 25 February 1994, 1995/21 of 24 February 1995, and 1996/18 of 11 April 1996 the Commission on Human Rights has repeatedly urged Member States to ratify or accede to the Convention.

3. Despite these urgings, as of March 1997, only eight States - Bosnia and Herzegovina, Colombia, Egypt, Morocco, the Philippines, Seychelles, Sri Lanka and Uganda - have ratified or acceded to the Convention. In addition, only two States - Chile and Mexico - have signed the Convention. It is notable that none of the major labour-importing countries has signed or ratified the Migrant Workers' Convention.

4. The International Labour Organization estimates that there are more than 35 mission migrant workers worldwide. 1/ While abuses committed against migrant workers continue, the Migrant Workers' Convention remains completely ineffective. At the fifty-second session of the Commission, in its resolution 1996/18 it requested the United Nations Secretary-General to look into the efforts made by the Secretariat to promote the Convention and the protection of migrant workers, but no mandate was created to report those findings or to maintain his investigation into the rights and abuses related to migrant workers. Therefore, more concrete responses are required to investigate the status of migrant workers around the world.

5. Owing to the slow progress of States in ratifying or acceding to the Convention, and to the abuses being suffered by migrant workers worldwide, the Commission must act to protect the rights of migrant workers and their families via presently existing human rights instruments. These instruments include:

(a) The International Covenant on Civil and Political Rights. A great number of the rights that would be protected by the Migrant Workers' Convention are currently protected by overlapping provisions in this Covenant, which has been ratified or acceded to by 136 States. Many of the provisions in the Migrant Workers' Convention are virtually exact replicas of the articles in the Covenant. The Covenant applies to any person within the borders of a State, thereby protecting documented and undocumented migrant workers and their families located within a Member State's territories. As this Covenant binds the most States and protects the most rights of migrant workers and their families, this is the best instrument currently in force that is available for the protection of migrant workers;

(b) The International Covenant on Economic, Social and Cultural Rights. The Migrant Workers' Convention enumerates rights which may currently be protected under this Covenant (135 States parties). The types of rights found in the Migrant Workers' Convention that may currently be protected by the Covenant include: employment, trade unions, medical care, education, housing, cultural life, and the recognition that the family is the natural and fundamental group unit of society and is therefore entitled to protection by society and the State. 2/ However, migrant workers and their families are provided less protections in some States, as article 2 (3) of the Covenant allows developing countries to determine to what extent they would guarantee the economic rights in the present Covenant to non-nationals;

(c) ILO Convention concerning Migrant Workers (Supplementary Provisions) (No. 143). This Convention is applicable on a much narrower scale than the Covenants, in that article 11 of ILO Convention 143 specifically excludes various classes of migrant workers. 3/ ILO Convention 143 protects areas of rights of certain migrant workers that are also found in the Migrant

Workers' Convention, including: expulsion from State of residence; cultural identity; links to a State of origin, reunification of spouses and children; language, and choice of remunerated activity. This Convention does not appear to protect the rights of family members of migrant workers;

(d) ILO Convention concerning Migration for Employment (No. 97). This Convention also precludes protection to certain categories of migrant workers. 4/ Provisions of the Migrant Workers' Convention that are similar to articles in ILO Convention 97 provide protection to migrant workers in the following areas: trade unions, taxes, transfer of funds, employment services, social security;

(e) ILO Convention concerning Equality of Treatment (Social Security) (No. 118). This Convention allows States parties to determine which social security provisions to apply to its nationals and to the nationals of other States parties. The areas of rights enumerated in the Migrant Workers' Convention that may currently be protected by ILO Convention 118 include: employment health benefits; old-age benefits; employment injury benefits; unemployment benefits; access to social security and health services.

6. The instruments enumerated above currently protect many of the rights that would be protected under the Migrant Workers' Convention. These covenants and conventions are currently in force and may be used to protect the rights of migrant workers and their families at the present time. However, many specific rights enumerated in the Migrant Workers' Conventions are left unprotected by the above-mentioned instruments. Additionally, the lack of protections afforded by the ILO to various classes of migrant workers and their families limits their use as a substitute for the Migrant Workers' Convention.

7. While the States debate the usefulness of the Migrant Workers' Convention, and currently enforceable treaties are not used to protect the rights of migrant workers and their families, abuses of these populations continue. Particularly alarming to Human Rights Advocates are abuses committed against migrant workers by government officials of receiving States. Lack of government protection often encourages and perpetuates the physical abuse of migrant workers in their States of residence. Following are examples of abuses suffered by migrant workers and their families in 1995 and 1996.

8. United States of America. The United States Border Patrol is the enforcement arm of the United States Immigration and Naturalization Service - the government body that controls immigration in the United States. While hiring has dramatically increased for Border Patrol agents over the past few years, training has decreased. 5/ By 1998, the number of Border Patrol agents will have increased to 7,000, up from 4,200 agents in 1995. 6/ Investigations into abuses are almost invariably perfunctory and officers are rarely held accountable, except perhaps through the civil justice system. 7/ Indeed, approximately only one or two complaints out of several hundred received by the Justice Department result in criminal charges being filed against Border Patrol agents. 8/ The following are examples of abuses documented recently:

The brutal beating of two suspected illegal immigrants

The shooting, by a Border Patrol agent, of a man standing on the Mexican side of the border

The rape, by a Border Patrol agent, of a 25-year-old woman from El Salvador trying to cross the border

Two separate crashes of vehicles filled with illegal immigrants who were being pursued by Border Patrol agents at high speed, killing 10 and injuring 36

The sexual assault of two 23-year-old women

The inhuman detention, by Border Patrol agents, of female illegal immigrants trying to cross the border: one woman, who was seven months pregnant, was not fed for 12 hours, had limited access to a bathroom, was told that she would be handcuffed to a chair if she stood up without permission, and was forced to sleep on the floor in a small room with 24 other women. 9/

9. Asian and Middle Eastern countries. A survey regarding Philippine migrant workers estimated that in 1995 almost 50,000 cases of sexual harassment, rape, murder, and other maltreatment of Philippine migrant workers occurred in Singapore, Hong Kong, the United Arab Emirates, Qatar, Kuwait, Iraq, the Islamic Republic of Iran, Saudi Arabia and Oman. In Hong Kong and Singapore alone, 30 Philippine women working as domestics died in the first four months of 1996. 10/

10. Malaysia. A migrant workers' activist was criminally charged by the Government of Malaya for preparing a report that criticized the conditions of Government-operated detention centres for foreign migrant workers. 11/

11. Europe. Homicides and injuries of immigrants by extremists in Germany have escalated and the rights of immigrants in both Germany and France are being dramatically cut back. 12/

Recommendations

12. In light of the above, Human Rights Advocates asks that the Commission request that the Secretary-General gather information from other United Nations bodies dealing with human rights violations to report on whether and how treaties under their purview are being used to protect the rights of migrant workers, and to submit a report of his findings to the Commission at its fifty-fourth session.

13. Human Rights Advocates also asks that the Commission request the Secretary-General to request from the International Labour Organization information on the extent to which it receives complaints from migrant workers and their families that are not protected under ILO instruments.

14. Human Rights Advocates finally requests that the Commission analyse and report on information regarding abuses that are not being protected by

treaties currently in force, with a view to determining what role the Commission on Human Rights can play in protecting the rights of migrant workers and their families.

Notes

1/ "Female Asian migrants: a growing but increasingly vulnerable workforce", ILO Press Release ILO/96/1, 5 February 1996.

2/ Articles in the Migrant Workers' Convention that are similar to those found in the International Covenant on Economic, Social and Cultural Rights are principally found in Part IV of the former, which contains protections applicable only to documented workers and their families.

3/ Numerous classes of migrant workers are specifically excluded from the protection of ILO Convention 143.

4/ Migrant workers specifically excluded from the protection of ILO Convention 97 include: frontier workers; short-term-entry members of the liberal professions and artists; seamen.

5/ Human Rights Watch, World Report 1997: Events of 1996 317 (1997).

6/ Rotella, "Border Patrol's record on abuses is among nation's worst, report says", Los Angeles Times, 13 April 1995, at A3.

7/ Americas Watch, Brutality Unchecked: Human Rights Abuses Along the Border with Mexico, 1, 4 (1992).

8/ Light, "Rape on the border", The Progressive, September 1996, at 24.

9/ Malnic and Boyer, "Deputies' clubbing of 2 suspects taped", Los Angeles Times, 2 April 1996, at A1; Human Rights Watch, World Report 1997: Events of 1996 316 (1997); "U.S. border agent accused in sexual assault on an illegal alien", New York Times, 22 December 1995, at A29; Rotella, "Case highlights alleged abuses at border", Los Angeles Times, 14 January 1996, at A3; Perry, "2 killed as van, border patrol vehicle collide", Los Angeles Times, 27 April 1996, at A1; Light, "Women bear the brunt", The Progressive, September 1996, at 21.

10/ Gaouette, "Dream of having a nanny more real for busy moms", The Christian Science Monitor, 19 February 1997, at 1; "Manila: Women violence, a criminal act", United Press International, 1 June 1996; Tefft, "Toilers who know no boundaries", The Christian Science Monitor, 19 November 1995, at 1.

11/ "A call for justice for Malaysian migrant workers: an interview with Irene Fernandez", Multinational Monitor, December 1996, at 16.

12/ "The Schengen Convention as a violation of international Law ..." 18 Boston College (International) and Comp. L. Rev. 401, 405-408 (1995).